

**2009
LEGISLATIVE UPDATE**

Prepared by the Missouri Office of Prosecution Services

**Chapter 43
State Highway Patrol**

Section 43.200 – Allows Highway Patrol to serve search warrants on DWI cases without notifying the county sheriff.

Section 43.500(9) – Defines “unique biometric identification” as “automated methods of recognizing and identifying an individual based on a physiological characteristic.” Methods may include facial recognition, fingerprints, palm prints, hand geometry iris recognition, and retinal scan.

Section 43.503.2 – Requires law enforcement agencies making misdemeanor and felony arrests under 43.506 to furnish a photograph “without undue delay” to the central repository and **IF AVAILABLE** any other unique biometric identification collected.

Section 43.503.5 – Requires prosecuting attorney to notify the central repository of decision NOT to file criminal charges on any charge referred to prosecuting attorney. **THIS IS A CHANGE FROM THE PAST PRACTICE OF NOTIFYING THE HIGHWAY PATROL OF CHARGES FILED OR AMENDED. THIS DUTY NOW FALLS ON THE CIRCUIT CLERK.**

**Chapter 167
Pupils and Special Services**

Section 167.043 – Prohibits counties and cities from discriminating in employment practices based on applicant’s elementary or secondary education program if program is permitted under state law.

**Chapter 173
Department of Higher Education**

Section 173.754 – Creates the crime of using or attempting to use a false or misleading degree for admission to institution of higher education or in connection with any business, employment, occupation, profession, trade or public office. This is a class C misdemeanor.

Chapter 210

Child Protection and Reformation

Section 210.854 – Allows any defendant who pleads guilty to or was found guilty of criminal non-support, and is later determined not to be the father, to have record expunged. Only applies to conviction involving child who is determined not be fathered by defendant. Successful dis-establishment of paternity does not create a cause of action for monies already paid.

Chapter 217

Department of Corrections

Section 217.439 – Upon request of a victim, a photograph shall be taken of the incarcerated individual prior to release and provided to the crime victim.

Section 217.450 – Changes the law regarding detainers. A defendant may request final disposition if a law enforcement agency or prosecutor's office has delivered a **CERTIFIED COPY** of a warrant **AND** has requested that a detainer be lodged against him with the facility in which he is confined.

Section 217.460 – The case may be dismissed if it is not brought to trial within 180 days **AND** if the court finds that the offender's constitutional right to a speedy trial has been denied.

Section 221.095 – Creates the crime of damage to private jails. Class D felony.

Chapter 273

Dogs – Cats

Section 273.033 – Creates an absolute defense to criminal prosecution for killing or injuring a dog, if shown by a preponderance of the evidence, that the person charged was in reasonable apprehension of imminent harmful contact by the dog or was acting to prevent such imminent harmful contact against another person. Creates prima facie evidence of such reasonable apprehension if such person has complained to the county sheriff or appropriate animal control authority on two separate occasions and at least one of the occasions was motivated by reasonable apprehension for safety of a person or livestock. Allows court to award attorney's fees, costs and expenses to defendant who has absolute defense.

Chapter 302

Drivers' and Commercial Drivers' Licenses

Section 302.060 – Amended to provide that any person who is convicted twice within a five-year period of violating state law, or a county or municipal ordinance, for driving while intoxicated or any other intoxication-related traffic offense as defined in 577.023, or who has been convicted of involuntary manslaughter while operating a motor vehicle

in an intoxicated condition shall be denied a driver's license for a period of five years from the date such person was convicted or pled guilty. The bill also removes the requirement that such denial can occur only where the person was represented by an attorney or waived his right to an attorney in the underlying criminal case. (used to be able to avoid a 5-yr denial by pleading to a BAC charge)

Section 302.545 – Amended to provide that a person may not have the record of a driver's license suspension or revocation as a result of driving with a BAC of .02 or greater expunged if such person was holding a commercial driver's license at the time of the offense.

Section 302.755 – Amended to provide that a person is disqualified from driving a commercial motor vehicle for one year if convicted of a first violation of driving under the influence of alcohol or a controlled substance or of an alcohol-related enforcement contact as defined in 302.525.3.

Chapter 303

Motor Vehicle Financial Responsibility Law

Section 303.024 – Criminalizes the production, manufacture, sale or distribution of a fraudulent insurance identification card. This is a class D felony. Also criminalizes the knowing or intentional possession of such a fraudulent card, which is a class B misdemeanor.

Chapter 304

Traffic Regulations

Section 304.820 – Prohibits persons under 21 years of age from sending, reading or writing a text or electronic message while operating a motor vehicle on highways of the state. This is an infraction. Not to be construed or interpreted to prohibit person from making or taking part in telephone call while operating a motor vehicle. Preempts local ordinances to the contrary.

Chapter 306

Watercraft Regulation and Licensing

Section 306.109 – Beer Bongs, Containers and Coolers

1. Prohibits the use of beer bongs or other drinking devices used to consume similar amounts of alcohol on rivers of the state. Defines "beer bong" to include "any device that is intended and designed for the rapid consumption or intake of an alcoholic beverage, including but not limited to funnels, tubes, hoses, and modified containers with additional vents."
2. Prohibits the possession of large volume alcohol containers that hold more than four gallons of an alcoholic beverage on the rivers of the state.

3. Prohibits the possession of expanded polypropylene coolers on or within fifty feet of any river, except in developed campgrounds, picnic areas, landings, roads and parking lots located within fifty feet of such rivers. Does not apply to high density bait containers used solely for such purpose.
4. Violation is a class A misdemeanor.
5. Does not apply to Mississippi, Missouri or Osage Rivers.

Chapter 311

Liquor Control Law

Section 311.325 – Minor in Possession

1. Changes “visibly intoxicated” to “visibly in an intoxicated condition.”
2. Any person under 21 years of age who purchases or attempts to purchase, or has in his possession any intoxicating liquor, or who is visibly in an intoxicated condition is deemed to have given implied consent to chemical tests or tests of breath, blood, saliva or urine for purposes of determining alcohol or drug content of the person’s blood. Limited to two tests. Allows person to have their own test administered by person of their choosing, at their expense, and **IN ADDITION TO** the test administered by the law enforcement officer.

Section 311.326 – Amended to provide that a person may not apply to have a conviction under 311.325 expunged from his or her record for at least one year after he or she turns twenty-one (used to be one year or when they turned 21, whichever came first).

Chapter 478

Circuit Courts

Section 478.495 – Authorizes the creation of criminal non-support courts and sets out procedures. No case can be referred to criminal non-support courts without the consent of the prosecutor. Creates criminal non-support courts coordinating commission.

Chapter 491

Witnesses

Section 491.725 – Child Witness Protection Act

1. Applies to witnesses 14 years of age or younger;
2. At court’s discretion may apply to witnesses 15 to 17 years of age, but requires court to make written findings to such effect;
3. Requires court to make sure child understands the oath;
4. Requires court to ensure questions asked are in age appropriate form;
5. Allows prosecutor to file motions in limine for comfort item or support person
6. Must be filed 30 days in advance;
7. Must show by preponderance of evidence that;
 - a. Child cannot reliably testify without item or person and

- b. That item or person is not likely to prejudice the trier of fact;
- 8. Court can make own motion, or prosecutor can make motion to order accommodations for comfort of child;
- 9. Examples:
 - a. Adjusting the layout of the courtroom;
 - b. Conducting the proceedings outside the normal courtroom, or;
 - c. Relaxing the formalities of the proceedings.

Chapter 544

Arrest, Examination, Commitment and Bail

Section 544.665 – Amends the penalties for failure to appear.

- 1. If underlying “criminal matter” includes a felony then FTA is a class D felony.
- 2. If underlying “criminal matter” includes only misdemeanors, then FTA is a class A misdemeanor.
- 3. If underlying “criminal matter” is an infraction or local ordinance violation, then FTA is an infraction. Local ordinance FTA infraction can only be punished by amount not greater underlying ordinance fine.

Chapter 545

Proceedings Before Trial

Section 545.050 – DELETED

Removes the requirement that the name of the prosecutor be affixed to the charging document and that acquittal results in costs against the prosecutor.

Chapter 556

Preliminary Provision (Criminal Code)

Section 556.021 – Infractions

- 1. Defines infraction to be offense punishable only by fine, forfeiture or other civil penalty;
- 2. Filing of infraction is a civil action;
- 3. “Person authorized to bring a criminal action” may file the civil action;
- 4. Action shall be brought in the name of the State of Missouri;
- 5. Specifies that standard of proof is preponderance of the evidence;
- 6. Must be tried to the bench;
- 7. Allows for judgment to be entered for the plaintiff
- 8. **DOES NOT SPECIFY HOW TO ENFORCE THE JUDGMENT;**
- 9. Does allow the Supreme Court to promulgate rules for the enforcement of this section;
- 10. Creates crime of failure to obey law enforcement officer in discharge of duty in course of enforcing an infraction. Class A misdemeanor.

Section 556.036(4) – Statute of limitations is five years for offenses of arson in the first degree when charged as a B felony, arson in the second degree or knowingly burning and exploding.

Chapter 561 Collateral Consequences of Conviction

Section 561.031.1 – Video-Conferencing

1. Removes requirement that a full-record of a proceeding be made by split-screen image for video-appearance in court;
2. Allows for video-conference at:
 - a. preliminary hearing with consent of defendant;
 - b. Any criminal proceeding which is not a matter of record;
 - c. Any criminal proceeding with consent of defendant.

Chapter 565 Offenses Against the Person

Section 565.063 – Redefines “domestic assault offense” for use in enhancement to includes domestic assault in the first degree, domestic assault in the second degree, assault in the first degree or assault in the second degree if the victim was a family or household member, or a crime from another state, federal, tribal or military offense which, if committed in Missouri, would be assault first or second degree or domestic assault first or domestic assault second degree.

Sections 565.081, 565.082 and 561.083 – Defines “corrections officer” to include any jailer or corrections officer of the state or any political subdivision.

Section 565.084 – Expands the crime of tampering with a judicial officer to include:

1. Juvenile officer of deputy juvenile officer;
2. State prosecuting attorney or assistant;
3. State circuit attorney or assistant.

Chapter 566 Sexual Offenses

566.013 – Allows the attorney general to request the prosecuting attorney of Cole County to request an investigative subpoena in the course of criminal investigations under chapter 566 when the venue cannot be readily determined without further investigation. After review, the attorney general shall provide the evidence to the county prosecuting attorney.

Section 566.030 and 566.060 – Forcible Rape and Forcible Sodomy

1. If victim is younger than 12 years of age and offense was outrageously or wantonly vile, horrible, or inhuman, in that it involved torture or depravity of

mind, then penalty is life imprisonment without parole, probation or conditional release.

Section 566.145 – Sexual Contact with a Prisoner

1. Specifies that the prisoner must be confined in order to be a victim;

566.148 – Prohibits sex offenders from being physically present in, loitering within 500 feet of, or approaching, contacting or communicating with any child under 18 years of age in any child care facility building or real property, unless offender is a parent, legal guardian or custodian of the a student who is present.

1. “Child care facility” is defined in 210.201 RSMo.
2. This is a class A misdemeanor.

566.150 – Sex offender not to be within 500 feet of a school. Adds language that defendant is guilty “regardless of the person’s knowledge of his or her proximity to school property or a school-related activity.” **THIS LANGUAGE DOES NOT EXIST IN THE CHILD CARE FACILITY STATUTE.**

566.150 – Prohibits sex offenders from being within 500 feet of a public park with playground equipment or a public swimming pool.

1. First offense is a class D felony.
2. Second offense is a class C felony.

566.155 – Prohibits sex offenders from serving as an athletic coach, manager, or athletic trainer for any sports team in which a child less than 17 years of age is a member.

1. First offense is a class D felony.
2. Second offense is a class C felony.

Section 566.226 – In cases of domestic assault, sexual assault, stalking or forcible rape, judge has discretion to disclose information identifying the defendant that may lead to the identification of the victim. Victim may provide a statement regarding whether they want information disclosed. The court must consider the statement and the welfare and safety of the victim.

Chapter 568
Offenses Against the Family

Section 568.040 – Criminal non-support

1. Class A misdemeanor unless total arrearage is in excess of the total of 12 monthly payments;
2. Allows court to order payment of child support as condition of probation;
3. Clarifies “good cause” as an affirmative defense and sets out burden of proof on defendant as preponderance of the evidence;
4. Allows non-violent defendant to be granted work release from DOC.

5. Allows every non-violent, first and second time offender who has not previously been placed on probation or parole for criminal non-support to be considered for parole or work release.
6. Salazar fix – amends “child” to include any child born out of wedlock whose paternity is established judicially or administratively, regardless of biological relationship.

568.045 – Endangering the Welfare of a Child in the First Degree

1. Clarifies that mere possession of methamphetamine in the presences of person less than 17 years of age is a crime.

Chapter 570
Stealing and Related Offenses

Section 570.030 – Stealing – Expands list of items that constitute class C felony:

1. Any explosive weapon as defined in section 571.010 RSMo;
2. Any animal considered livestock as that term is defined in 144.010 RSMo;
3. Captive wildlife held under permit issued by the conservation commission
4. Prior conviction of livestock or captive wildlife stealing enhances next offense to a class B felony if value of animals is \$3000 or more (mandatory 80% prior to parole eligibility).

Section 570.040 – Enhancement of stealing related offenses.

1. Changes the law to allow any two prior stealing related offenses that *occur* on separate occasions to be used as priors;
2. Eliminates requirement that *convictions* occur on two separate occasions;
3. Eliminates requirement that defendant have received a sentence of 10 days or more on prior sentences;
4. Adds robbery to list of “stealing-related offenses.

Section 570.080 – Receiving stolen property

1. Adds explosive weapon to property that is considered a class C felony;

Chapter 573
Pornography and Related Offenses

Section 573.013 -- Allows the attorney general to request the prosecuting attorney of Cole County to request an investigative subpoena in the course of criminal investigations under chapter 573 when the venue cannot be readily determined without further investigation. After review, the attorney general shall provide the evidence to the county prosecuting attorney.

Section 573.020 – Promoting obscenity.

1. Removes requirement that defendant know of content and character of obscene material;

Section 573.023 – Sexual exploitation of a minor,

1. Removes requirement that defendant know of content and character of obscene material;
2. Adds element of knowingly or reckless conduct

Section 573.025 – Promoting child pornography in the first degree

1. Removes requirement that defendant know of content and character of child pornography

Section 573.030 – Promoting pornography for minors or obscenity in the second degree

1. Removes requirement that defendant know of content and character of material

Section 573.035 – Promoting pornography in the second degree

1. Removes requirement that defendant know of content and character of child pornography;

Section 573.037 – Possession of child pornography

1. Removes requirement that defendant know of content and character of obscene material;
2. Adds element of knowingly or recklessly possessing obscene material

Section 573.040 – Furnishing pornographic material to minors

1. Removes requirement that defendant know of content and character of material;

Section 573.060 – Public display of explicit sexual material

1. Adds mental state of recklessness;

Section 573.065 – Coercing acceptance of obscene material

1. Removes requirement that defendant know of content and character of material;

Chapter 575

Offenses Against the Administration of Justice

Section 575.150 – Resisting Arrest

1. Expands statute to apply to warrants issued by court or probation and parole officer;
2. Class D felony if being arrested for a felony or warrant issued for FTA or probation violation on felony case.

Section 575.153 – Creates the crime of disarming a peace officer

1. Prohibits removing or depriving a peace officer or correctional officer of use or possession of firearm or deadly weapon while officer is acting within the scope of official duties;
2. Defendant must know or reasonably could have known that person was peace officer or correctional officer;
3. Peace officer or correctional officer cannot be engaged in incident involving felonious conduct at time of disarmament;
4. Class C felony.

Section 575.260 – Tampering with a judicial proceeding

1. Adds prosecuting or circuit attorney and attorney general to list

**Chapter 576
Offenses Affecting Government**

Section 576.050 – Misuse of official information

1. Prohibits person from knowingly or recklessly obtaining or disclosing information from MULES or NCIC;
2. Adds “any other criminal justice information sharing system that contains individually identifiable information.”

**Chapter 577
Public Safety Offenses**

Section 577.023 – DWI Amendments

1. Defines “continuous alcohol monitoring”
2. Requires the court to consider continuous alcohol monitoring or verifiable breath alcohol testing at a minimum of 4 times per day for no less than 90 days at defendant’s cost.
3. Removes requirement that a defendant be represented by or waive attorney before offense can be used as a prior;
4. Burden shifts to defendant to show that the prior was uncounseled;
5. Allows for a prior that resulted in a fine to be used to enhance;

Section 577.029 – Removes requirement that a blood draw be performed at drawer’s place of employment

1. Allows nurse or other qualified technician to draw blood at a police station or at a checkpoint instead of transporting to hospital;

**Chapter 578
Miscellaneous Offenses**

Section 578.022 – Exempts law enforcement dogs from 273.033, 273.036 and 578.024

Section 578.024 – Creates the crime of allowing dog to bite without provocation

1. If a person owns a dog or domestic animal that has previously bitten any person without provocation and bites again, the owner is guilty of a class B misdemeanor **UNLESS**
2. The bite results in serious injury, then it is a class A misdemeanor;
3. The bite and the previous bite resulted in serious injury, then it is a class D felony; or
4. The bite results in the death of any person, then it is a class C felony.
5. Provides for procedures to impound animal and for owner to file an appeal and have a disposition hearing.
6. Does not apply to a person who is bit while engaging in criminal activity other than trespass in the second degree or trespass in the first degree by a person under the age of 12.

Section 578.028 – Creates the crime of removing an electronic dog collar

1. Must have intent to prevent or hinder owner from locating the dog;
2. Class A misdemeanor;

Section 578.250, 578.255, 578.260 and 578.265 – Expands the list of prohibited substances that can be inhaled; allows for enhancement of second offense to class D felony;

Chapter 589

Crime Prevention & Control Programs & Services

Section 589.400 – Sex Offender Registration (Megan’s Law)

1. Allows registrant to petition the court for exemption from the sex offender registry;
2. Allows registrant to immediately file a petition for removal in the circuit court in the county of conviction if registrant is 18 years old or younger at the time of offense of:
 - a. Child molestation in the second degree;
 - b. Sexual misconduct in the first degree when a misdemeanor;
 - c. Sexual misconduct in the second degree;
 - d. Sexual misconduct in the third degree.
3. Prosecuting attorney still must be given notice and has right to present evidence showing why relief should not be granted
4. Allows out of state convictions to be used as prior offense for enhancement

Chapter 590

Peace Officers, Selection, Training & Discipline

Section 590.701 – Custodial Interrogation Statute

1. Requires all custodial interrogations of suspects to be recorded in the following cases:
 - a. Murder in the first degree;
 - b. Murder in the second degree;

- c. Assault in the first degree;
 - d. Assault of law enforcement officer in the first degree;
 - e. Domestic assault in the first degree;
 - f. Elder abuse in the first degree;
 - g. Robbery in the first degree;
 - h. Arson in the first degree;
 - i. Forcible rape;
 - j. Forcible sodomy;
 - k. Kidnapping;
 - l. Statutory rape in the first degree;
 - m. Statutory sodomy in the first degree;
 - n. Child abuse;
 - o. Child kidnapping.
- 2. Interview does not have to be recorded if:
 - a. Suspect requests it not be recorded;
 - b. Interrogation occurs outside Missouri;
 - c. Exigent public safety circumstance prevent recording;
 - d. Suspect makes spontaneous statements;
 - e. Recording equipment fails;
 - f. Recording equipment is not available at location where the interrogation takes place.
 - 3. Requires law enforcement agency to adopt written policy to record custodial interrogations;
 - 4. If agency fails to comply with this statute, the governor may withhold state funds if agency did not act in good faith in attempting to comply;
 - 5. Does not create grounds to excluded evidence;
 - 6. Compliance or non-compliance may not be admitted into evidence, argued, referenced, considered or questioned during a criminal trial;
 - 7. Does not create a private cause of action.

Chapter 595

Victims of Crime, Compensation & Services

Section 595.027 – Crime Victim’s Compensation Fund

- 1. Changes responsibility for crime victim compensation fund to department of public safety;
- 2. Specifies that “medical expenses” are “medically necessary”
- 3. Specifies that no victim may receive compensation if on electronic monitoring;
- 4. Allows DPS to receive gifts and contributions for crime victims to be credited to CVCF;
- 5. Gives victims the right to be represented by counsel at juvenile probation and board initiated parole hearings;
- 6. Gives victims the right to a photograph from DOC prior to release

Section 595.220 – Payments to medical providers in sexual assault cases

1. Department of Public Safety shall make payments to medical providers to cover reasonable charges of forensic exam of victims of sexual offenses if:
 - a. Victim or guardian consents in writing to exam; and
 - b. Report of exam is on form approved by AG with advice of DPS
2. Minor may consent to exam without parental consent;
3. Highway Patrol to develop collection kits to distribute to medical providers
4. Claim must be submitted within 90 days of exam

Chapter 632
Comprehensive Psychiatric Services

Section 632.495 – Allows the Department of Mental Health to contract with county jails to house sexual violent predators.

Chapter 650
Department of Public Safety

650.055 – DNA Profiling

1. Requires agency to take DNA and fingerprint sample from person registering as a sex offender;
2. Requires DNA sample to be taken at time of booking for certain offenses;
3. Arresting agency must notify central repository within 90 days of “warrant refusal” and crime lab must expunge DNA from its database;
4. If charges are withdrawn, prosecutor must notify crime lab and DNA will be expunged;
5. If case is dismissed, if court finds no probable cause at preliminary hearing or if acquitted, then court must notify crime lab and DNA will be expunged;
6. Crime lab must expunge within 30 days of notice.

Section 650.059 – Creates the Crime Laboratory Review Commission. One prosecuting attorney to be appointed by the governor to serve on the commission.

Miscellaneous Provisions from HB 62

1. Creates crime of noncompliance of livestock records inspection. Class A misdemeanor.
2. Creates crime of promoting online sexual solicitation by knowingly permitting a web-based classified services to post advertisements promoting prostitution

or child sexual conduct or sexual trafficking of a child after receiving notice from the attorney general. Unclassed felony punishable by \$5000 per day.

3. Deletes section 229.110 – Hedge fence statute which mandated removal from office of prosecuting attorney who did not file suit.
4. Deletes section 550.050 and 550.080 – Statute that taxed costs against county and/or prosecutor in case of acquittal.
5. Deletes section 550.070 – Statute that taxed costs against prosecutor if defendant discharged after preliminary hearing.